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19 *Counsel for Defendant Google LLC*

20 **UNITED STATES DISTRICT COURT**

21 **NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION**

22 CHASOM BROWN, WILLIAM BYATT,
23 JEREMY DAVIS, CHRISTOPHER
CASTILLO, and MONIQUE TRUJILLO,
24 individually and on behalf of themselves and
all others similarly situated,

Case No. 4:20-cv-03664-YGR-SVK

25 Plaintiffs,

26 **GOOGLE LLC’S ADMINISTRATIVE
MOTION TO SEAL PORTIONS OF
GOOGLE’S RESPONSE TO THE
COURT’S OCTOBER 27, 2022 ORDER TO
SHOW CAUSE (DKT. 784)**

27 vs.

Judge: Hon. Susan van Keulen, USMJ

28 GOOGLE LLC,

Defendant.

Case No. 4:20-cv-03664-YGR-SVK

1 **I. INTRODUCTION**

2 Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”)
 3 respectfully seeks to seal certain portions of Google’s Response to the Court’s October 27, 2022
 4 Order to Show Cause, Dkt. 784 (“Google’s Response”), which contains non-public, highly sensitive
 5 and confidential business information that could affect Google’s competitive standing and may
 6 expose Google to increased security risks if publicly disclosed, including details related Google’s
 7 internal projects, internal databases, data signals, and logs, and their proprietary functionalities, as
 8 well as internal metrics, which Google maintains as confidential in the ordinary course of its
 9 business and is not generally known to the public or Google’s competitors. This information is
 10 highly confidential and should be protected.

11 This Administrative Motion pertains to the following information contained in Google’s
 12 Motion:

13 Document	14 Portions to be Filed Under Seal	15 Party Claiming Confidentiality
16 GOOGLE LLC’S 17 RESPONSE TO THE 18 COURT’S OCTOBER 19 27, 2022 ORDER TO 20 SHOW CAUSE (DKT. 21 784)	12 Highlighted Portions at: 13 Pages: i:8, i:11, i:13-19, 3:13, 3:23-24, 4:4, 14 4:17, 4:19, 4:22, 4:27, 5:3-5, 5:13-15, 5:20, 15 5:22-23, 5:25, 5:27, 6:1, 6:3, 6:5, 6:7, 6:9, 16 6:17-19, 6:27, 7:9-10, 7:12, 7:15-17, 7:21-23, 17 7:25-28, 8:1-3, 8:5-10, 8:12, 8:14-15, 8:18-26, 18 9:1-2, 9:4-9, 9:11-12, 9:14-16, 9:18-26, 10:1- 19 12, 10:16-26, 10:28, 11:1-16, 11:18-20, 20 11:22-28, 12:1, 12:3-4, 12:6-16, 16:4-6, 16:21, 21 17:1-3, 17:28, 18:1-2, 18:8-9, 22:5-7, 22:10	13 Google
22 Trebicka Exhibit 2 23 6/17/21 Berntson Depo 24 Trans. Excerpts	14 Highlighted Portions at: 15 Pages 4:12, 4:18, 4:21, 5:5-6, 198:7, 198:18, 16 199:17, 201:4-5, 372:11, 372:15, 375:9, 17 395:24, 396:14	18 Google
28 Trebicka Exhibit 3 29 2/18/22 McClelland 30 Depo Trans. Excerpts	20 Highlighted Portions at: 21 Pages 230:24, 231:6-8, 231:10, 231:17-19, 22 231:21, 231:23-25	23 Google
31 Declaration of Vineet 32 Kahlon	25 Highlighted Portions at: 26 Pages 1:15-16, 1:20, 1:22-28, 2:5, 2:14-17, 27 2:19, 2:21-3:1, 3:4, 3:7-12	28 Google

1	Kahlon Exhibit A GOOG-CABR-04430230	Highlighted Portions at: Seal Entirely	Google
2	Kahlon Exhibit C GOOG-CABR-04737037	Highlighted Portions at: Seal Entirely	Google
3	Declaration of Xianzhi Liu	Highlighted Portions at: Pages 1:14, 1:19-28, 2:1-9, 2:11-12, 2:14-19, 2:23-27, 3:1	Google
4	Liu Exhibit A GOOG-BRWN-00858530	Highlighted Portions at: Seal Entirely	Google
5	Declaration of Eric Maki	Highlighted Portions at: Pages 1:15, 1:18, 1:20, 1:22-2:15, 2:17-21, 2:26-28, 3:2-4, 3:7, 3:9, 3:11, 3:13, 3:15-20, 3:22, 3:24-25, 4:1-2, 4:4, 4:6, 4:8	Google
6	Maki Exhibit A GOOG-BRWN-00858548	Highlighted Portions at: Seal Entirely	Google
7	Declaration of Eugene Lee	Highlighted Portions at: Pages 1:14, 1:17, 1:19, 1:21-26, 2:1, 2:3-7, 2:12-13, 2:15-17, 2:19-21, 2:27-28, 3:2-7, 3:10-15, 3:18-20, 3:22, 3:24-4:4, 4:6, 4:8-12, 4:15-20, 4:23-24, 4:26-27, 5:4, 5:6-22, 5:26- 6:8, 6:11-17, 6:20-25, 6:27, 7:1-2, 7:5	Google
8	Lee Exhibit A GOOG-BRWN-00858554	Highlighted Portions at: Seal Entirely	Google
9	Lee Exhibit B GOOG-BRWN-00858520	Highlighted Portions at: Seal Entirely	Google
10	Declaration of Maciej Kuzniar	Highlighted Portions at: Pages 1:12, 1:17, 1:19, 1:22-23, 1:25-27, 2:2, 2:4, 2:9, 2:12-18, 2:20-22	Google
11	Kuzniar Exhibit A GOOG-BRWN-00858547	Highlighted Portions at: Seal Entirely	Google
12	Declaration of Vasily Panferov	Highlighted Portions at: Pages 1:18, 1:20-24, 1:26-2:4, 2:7-25, 3:8-9, 3:11-13	Google
13	Declaration of Matthew Harren	Highlighted Portions at:	Google

1		Pages 1:13, 1:15-16, 1:27-28, 2:1-2, 2:4-6, 2:10-18, 2:10-22, 2:25-26, 2:28, 3:1	
3	Declaration of Martin Sramek	Highlighted Portions at: Pages: 1:21, 1:26-27, 2:2, 2:9	Google
5	Declaration of Konstantinos Psounis	Highlighted Portions at: Pages 1-13	Google
8	Psounis Exhibit B GOOG-BRWN- 00858535	Highlighted Portions at: Seal Entirely	Google

II. LEGAL STANDARD

A party seeking to seal material must “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a showing that there are “compelling reasons” to seal the information. *See Kamakana v. City & Cty. Of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information in a non-dispositive motion must show only “good cause.” *Id.* at 1179-80. The rationale for the lower standard with respect to non-dispositive motions is that “the public has less of a need for access to court records attached only to non-dispositive motions because these documents are often unrelated, or only tangentially related, to the underlying cause of action” and that as a result “[t]he public policies that support the right of access to dispositive motions, and related materials, do not apply with equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM, LLC v. McAfee, Inc.*, 2015 WL 5116721, at *1 (N.D. Cal. Aug. 28, 2015) (“Records attached to nondispositive motions are not subject to the strong presumption of access.”) (citation omitted). Under the “good cause” standard, courts will seal statements reporting on a company’s users, sales, investments, or other information that is ordinarily kept secret for competitive purposes. *See*

1 *Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at *1 (S.D. Cal. Mar. 24, 2014); *Nitride*
 2 *Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at *1 (N.D. Cal. Aug. 1, 2018) (granting
 3 motion to seal “[c]onfidential and proprietary information regarding [Defendant]’s products” under
 4 “good cause” standard) (Van Keulen, J.). Although the materials that Google seeks to seal here
 5 easily meet the higher “compelling reasons” standard, the Court need only consider whether these
 6 materials meet the lower “good cause” standard.

7 **III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED**

8 Courts have repeatedly found it appropriate to seal documents that contain “business
 9 information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*,
 10 435 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that
 11 “contain[] confidential information about the operation of [the party’s] products and that public
 12 disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg of*
 13 *Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at *1 (N.D. Cal. Dec. 10, 2014). Materials that
 14 could harm a litigant’s competitive standing may be sealed even under the “compelling reasons”
 15 standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at
 16 *2 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’
 17 standard where that information could be used to the company’s competitive disadvantage”) (citation
 18 omitted). Courts in this district have also determined that motions to seal may be granted
 19 as to potential trade secrets. *See, e.g. United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015
 20 WL 295584, at *3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party]
 21 ha[s] not shown that the substance of the information . . . amounts to a trade secret”).

22 Here, Google’s Response comprises confidential and proprietary information regarding
 23 highly sensitive features of Google’s internal systems and operations that Google does not share
 24 publicly. Specifically, this information provides details related to Google’s internal projects and
 25 data logging systems, and their proprietary functionalities, as well as internal metrics. Such
 26 information reveals Google’s internal strategies, system designs, and business practices for
 27 operating and maintaining many of its important services while complying with its legal and privacy
 28 obligations.

1 Public disclosure of the above-listed information would harm Google’s competitive standing
 2 it has earned through years of innovation and careful deliberation, by revealing sensitive aspects of
 3 Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a proper
 4 basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-
 5 BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain
 6 sensitive business information related to Google’s processes and policies to ensure the integrity and
 7 security of a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-
 8 02787-WHO, Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because
 9 “disclosure would harm their competitive standing by giving competitors insight they do not have”);
 10 *Trotsky v. Travelers Indem. Co.*, 2013 WL 12116153, at *8 (W.D. Wash. May 8, 2013) (granting
 11 motion to seal as to “internal research results that disclose statistical coding that is not publicly
 12 available”).

13 Moreover, if publicly disclosed, malicious actors may use such information to seek to
 14 compromise Google’s data logging infrastructure. Google would be placed at an increased risk of
 15 cyber security threats. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963, at *3 (N.D. Cal.
 16 Sept. 25, 2013) (sealing “material concern[ing] how users’ interactions with the Gmail system
 17 affects how messages are transmitted” because if made public, it “could lead to a breach in the
 18 security of the Gmail system”). The security threat is an additional reason for this Court to seal the
 19 identified information.

20 The information Google seeks to redact, including information related to Google’s internal
 21 projects and data logging systems, and their proprietary functionalities, as well as internal metrics,
 22 is the minimal amount of information needed to protect its internal systems and operations from
 23 being exposed to not only its competitors but also to nefarious actors who may improperly seek
 24 access to and disrupt these systems and operations. The “good cause” rather than the “compelling
 25 reasons” standard should apply but under either standard, Google’s sealing request is warranted.

26 **IV. CONCLUSION**

27 For the foregoing reasons, the Court should seal the identified portions of Google’s
 28 Response.

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2 DATED: November 30, 2022

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